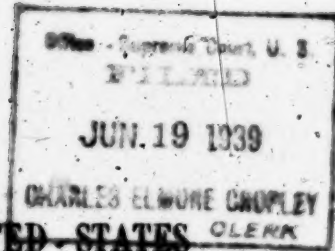


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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1939**

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**No. 120**

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**ERNEST NEWTON KALB AND MARGARET KALB,**  
**HIS WIFE,**

*Appellants;*

*vs.*

**HENRY FEUERSTEIN AND HELEN FEUERSTEIN,**  
**HIS WIFE.**

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**APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.**

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**STATEMENT AS TO JURISDICTION.**

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**WILLIAM LEMKE,**  
**JAMES J. McMANAMY,**  
*Counsel for Appellants.*

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### STATUTE CITED.

Bankruptcy Act, Section 75(n), 48 Statutes at Large, 1289, Chapter 869, as amended August 25, 1935, 49 Statutes at Large 943, Chapter 792 .....	1, 2
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**IN SUPREME COURT, STATE OF WISCONSIN**

**JANUARY TERM, 1936**

**Case No. —.**

**ERNEST NEWTON KALB AND MARGARET KALB,**  
*Appellants,*

*vs.*

**HENRY FEUERSTEIN AND HELEN FEUERSTEIN,**  
**HIS WIFE,**  
*Appellees.*

**NATURE OF THE CASE, ACTION TO CANCEL AND EXPUNGE FROM  
THE RECORD A SHERIFF'S DEED AND PLACE, APPELLANT IN  
POSSESSION.**

**STATEMENT OF FEDERAL QUESTION CONFERRING  
JURISDICTION TO SUPREME COURT OF THE  
UNITED STATES.**

**Federal Question Presented.**

The Federal question here presented is whether after the filing of a petition by a farmer under Section 75 (n) of the bankruptcy act as amended August 28, 1935, 49 Statutes at Large 943, Chapter 792, and while such petition is pending, a State court in which a mortgage foreclosure of the petitioner's farm is pending, such court has jurisdiction to confirm a sheriff's report of sale and direct the delivery of a deed to the mortgagee, the purchaser.

### **Manner in Which the Federal Question was Raised.**

The appellants base their right to maintain this action on the ground that the order of the District Court of the United States for the Eastern District of Wisconsin made September 6, 1935, reinstating their petition which was filed on October 2, 1934, under Section 75 (n) of the Bankruptcy Act, 48 Statutes at Large 1289 Chapter 869, as amended August 28, 1935, 49 Statutes at Large 943 Chapter 792, instantanely divested the State court of all jurisdiction to enter an order on September 16, 1935, confirming a sheriff's report of sale in a mortgage foreclosure had on July 20, 1935, and that the order so entered confirming such report of sale and directing the delivery of a sheriff's deed is wholly void. Section 75 (n) of the Bankruptcy Act, 49 Statutes at Large 943, Chapter 792, reads as follows:

"That section 75 of said Act, as amended, be further amended by amending subsection (n) to read as follows:

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

The appellants assert that the filing of their petition vests the Federal court with exclusive jurisdiction of all of their



property and protects it from interference by State courts and divests all State courts of jurisdiction while their petition is so pending; that no restraining order to the State court is required to effect such protection.

#### **How Question Raised in Trial Court.**

A general demurrer to the complaint was sustained by the trial court decreeing that State court had such jurisdiction.

#### **On Appeal to the Supreme Court of Wisconsin.**

On appeal to the Supreme Court of Wisconsin the order sustaining the demurrer was affirmed.

On December 31st, 1938, the trial court entered judgment dismissing the complaint.

On appeal to the Supreme Court of Wisconsin the judgment dismissing the complaint was affirmed on April 20, 1939, and from such judgment this appeal is taken.

**WILLIAM LEMKE,**  
*Fargo, North Dakota,*  
*Attorney for Appellant,*

**JAMES J. McMANAMY,**  
*Madison, Wisconsin,*  
*Attorney for Appellant.*

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**EXHIBIT "A".**

**STATE OF WISCONSIN: IN SUPREME COURT.**

**JANUARY TERM, 1939**

**ERNEST NEWTON KALB, Appellant,**

**vs.**

**HENRY FEUESTEIN et al., Respondents.**

Appeal from a judgment of the circuit court for Walworth County: EDGAR V. VERNER, Circuit Judge. *Affirmed.*

This case was here upon a former appeal which was from an order sustaining a demurrer. The Supreme Court of the United States having declined to review the determination of this Court because it was not final, the record was remitted to the trial court. There such proceedings were had that a final judgment dismissing the plaintiff's complaint was entered on December 31, 1938. From that judgment the plaintiff appeals.

*By the Court.*—The issues raised upon this appeal were considered by this Court in *Kalb v. Feuerstein* (1938), 228 Wis. 525, 279 N. W. 687. For the reasons there stated as grounds for sustaining the demurrer to the complaint, the judgment of the court dismissing the complaint should be affirmed.

The judgment appealed from is affirmed.